IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 882 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

M/S. MAFATLAL KANTILAL

Appearance:

MR ND GOHIL, APP. for Appellant.

MR DK MODI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 01/12/2000

ORAL JUDGEMENT

1. This is an appeal filed by the State of Gujarat against the order of JMFC, Sanand in Criminal Case No.889 of 1985 on 17.06.1992 acquitting the accused from the charge framed against them under section 7(1) read with

section 16(1)(a) of the Prevention of Food Adulteration Act.

2. The brief facts may be stated so as to appreciate the finding and conclusion arrived at by the Trial Court. On 22.04.1985 at around 14.00 hrs. the complainant viz. S.S.Patel, Food Inspector visited the shop of M/s.Mafatlal Kantilal, a Partnership Firm carrying on business at Danabazar, Sanand. The other two accused respondents are Mafatlal Kantilal Thakkar and Kantilal Hemchand Thakkar being partners of accused - respondent no.1 - partnership firm. It is stated that Mafatlal Kantilal Thakkar was present at the shop and the complainant purchased chilli powder for the purpose of analysis under the provisions of the Prevention of Food Adulteration Act,1954. As per the provisions of the Act, the chilli powder was divided into three equal portions of 200 grams each and after observing requisite formalities one part of the sample was forwarded to the Public Analyst, Regional Food Laboratory, Rajkot on 24.04.1985. The said forwarding letter is available at exhibit 23. The case of the prosecution is that the aforesaid sample of chilli powder has been found to be adulterated vide Public Analyst report dated 07.06.1985 and accordingly, in view of the provisions of section 2(19)(j) read with section 7(1) of the Act, the accused have committed offence punishable under section 16(1)(a) of the Act.

3. In light of the aforesaid facts the Trial Court framed the following issues :

i) Whether the prosecution has proved beyond doubt that the accused sold chilli powder for the purpose of analysis at around 14.00 hrs. on 22.04.1985 ? And whether the complainant had packed and sold such sample as per provisions of Food Adulteration Rules and sent it to the Public Analyst for analysis ? — Negative

ii) Does the prosecution prove beyond reasonable doubt that the sample of Chilli powder purchased by the complainant at around 14.00 hrs. on 22.04.1985 was adulterated? — Negative

iii) What order ? — As per final

order.

4. On going through the reasons given by the Trial Court, I find that the case of the prosecution is that it had purchased the sample of chilli powder from the shop of accused no.1 on 22.04.1985 at around 14.00 hrs. as well as the fact that the necessary formalities prescribed by the Act and Rules were observed. However, the prosecution fails to establish complying with the provisions of rules 17 (a) and (b) of the Prevention of Food Adulteration Rules, 1955. Rule 17 requires that one part of the sample for analysis shall be sent in a sealed packet to the Public Analyst immediately but not later than the succeeding working day by any suitable means. From the facts and evidence on record, it is found that the sample was purchased on 22.04.1985, however, the sample was sent to the Public Analyst on 24.04.1985. This is apparent from the forwarding letter which bears the date 24.04.1985 though the memorandum in Form 7 (exhibit 8) shows the date to be 23.04.1985. However, there is one more piece of evidence which shows that two parts of the samples which were to be forwarded to the Local Authority had also been sent on 24.04.1985 only. The complainant has not explained in his deposition as to why the sample was not forwarded on 23.04.1985 which was succeeding working day nor has he stated in his deposition as to during the intervening period where and how the sample was kept. Therefore, the conclusion of the Trial Court that the complainant having failed to comply with the provisions of Rule 17 of the Rules, the case of the prosecution would fail appears to be correct.

5. However, more fatal to the case of the prosecution is the fact which is evident from exhibit 23 i.e. the forwarding letter sending the the necessary part of the sample to the Public Analyst at Rajkot. The prosecution has failed to comply with the provisions of section 13(2) of the Act. Section 13 as is necessary for determining the controversy i.e. the relevant extract is reproduced hereunder :

"13. Report of public analyst - (1) The public analyst shall deliver in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution

of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analyst to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory".

6. In this connection, the learned Counsel for the accused - respondents raised twofold contentions. One, that there was violation in relation to compliance with provisions of section 13(2) of the Act in as much as though it is stated that the Local Health Authority forwarded the report of the Public Analyst vide forwarding letter dated 12.09.1985 (exh.37), the accused have not received either statutory notice or report of the Public Analyst. In this connection, he has placed reliance on three unreported decisions rendered by this Court i.e. :

[1] Criminal Appeal No. 666 of 1990
State of Gujarat Vs. Jagdishkumar R.Thakkar
decided on 23.10.1996.

[2] Criminal Misc.Application No. 4378 of 1999
N.H.Vyas, Food Inspector Vs. Kannayalal
Jitmal Jain decided on 21.12.1999.

[3] Criminal Appeal No. 683 of 1991
State of Gujarat Vs. Bipinkumar Vadilal Shah
and one Another decided on 25.02.2000.

Wherein it is laid down that it is for the complainant to establish that statutory notice under section 13(2) of the Act along with the report of the Public Analyst was sent to the accused, that it had been received by the accused and in case there was denial by the accused it was for the prosecution to establish the actual receipt of such notice along with the report and in absence of the same there is no option but to hold that the prosecution would fail as right to reanalysis of the sample by the Central Food Laboratory is taken away, there being non compliance of the provisions of section

13(2) of the Act.

7. In the present case, on perusal of the record it is found that the Local Health Authority had sent statutory notice under section 13(2) on 12.09.1985 along with the report of the Public Analyst. The acknowledgment of registered post is available on record and I have gone through the acknowledgment as well as the same has been seen by learned Counsel of both the sides and it is not possible to ascertain and say with certainty as to who is the recipient of the postal envelope, signature being not legible. In these circumstances, there is no option but to accept the version of the defence that it has not received statutory notice along with the report of the Public Analyst and that the prosecution has failed to establish the nexus with the person who is in receipt of postal envelope sent by the local authority with the accused, and further, that such person was authorised to receive such communication on behalf of the accused. Thus, the case of the prosecution would fail on this count also and it is rightly held so by the Trial Court.

7. The second limb of the contention raised on behalf of the accused - respondents is more fatal in as much as , as can be seen from forwarding letter (exhibit 23), and the deposition of the complainant that the sample of the chilli powder was sent to the Public Analyst, Regional Food Laboratory, Rajkot; the same was duly received by the Regional Food Laboratory, Rajkot on 02.05.1985 and this fact is established from the record by the acknowledgment of Registered Post Acknowledgment Due as well as the acknowledgment letter dated 04.05.1985 sent by the Public Analyst, Regional Food Laboratory, Rajkot. These documents are available at exhibit 30. However, when the statutory notice under section 13(2) of the Act is forwarded, it mentions that the sample was forwarded to the Food and Drug Laboratory, Vadodara for the purposes of analysis and that the report about the analysis of such sample has been received from the Public Analyst, Vadodara. Therefore, the case of the prosecution on this count also fails there being total non application of mind on behalf of the Local Health Authority which is the sanctioning authority.

8. In light of the aforesaid findings, the final order passed by the JMFC, Sanand that the accused are acquitted vide the provisions of section 248(1) of the Code of Criminal Procedure read with section 7(1) of the Prevention of Food Adulteration Act,1954 does not require any interference and I hereby confirm the same.

9. In the result the appeal is dismissed. Record and Proceedings be returned.

Sd/-
(D.A.Mehta, J)

m.m.bhatt